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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,671	03/29/2004	Fred Naval Desai	8768MD	2970

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,671	<b>Applicant(s)</b> DESAI ET AL.	
	<b>Examiner</b> Jacqueline F. Stephens	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15-17 and 23-27 is/are rejected.
- 7) ☒ Claim(s) 11-14 and 18-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 4/27/05 have been fully considered but they are not persuasive. Applicant argues Newkirk does not teach an elastomeric component comprising an elastomeric composition that partially penetrates a first substrate as is required in Applicant's claims, and that such a result is not taught by Newkirk because it is not characteristic of the manufactured fabric which is disclosed. However, Newkirk teaches the composite fabric 10 is formed by laminating a fibrous nonwoven 11, and an elastic layer 12, by means of adhesive layer 13. Layer 13 is applied by spraying or slot coating, for example (col. 5, lines 39-63). The examiner has reasonable factual basis to conclude a sprayable adhesive, which is in liquid state, would at least partially penetrate a fibrous nonwoven web. Particularly, since Newkirk discloses that after application of the adhesive the layers are subjected to pressure, such as being fed through calendar nip rolls to form a laminate (col. 5, line 64 through col. 6, line 2). The pressure from the calendaring spreads the adhesive and would force a liquid adhesive, at least partially through a fibrous substrate. Determination of patentability is based on the product itself. Newkirk discloses elastomeric composition 13 (col. 5, lines 55-63) disposed there in a predetermined geometric pattern (col. 5, lines 39-55), such that the elastomeric composition partially penetrates the first substrate.

Applicant argues Newkirk does not teach or suggest Applicant's single step formation of the elastic/elastomeric component. The limitation regarding the formation of the elastic/elastomeric component is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

Regarding the rejection of claims 2-4, 8, and 9 as being unpatentable over the same Newkirk reference, Applicant's traverses the rejections for the same reasons as given above. For this reason, the response to the arguments regarding these claims is addressed in the paragraphs above.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: based on Applicant's argument presented 4/27/05, the recitation of "a singe step" in line 6 should read "single step". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 5-7, 10, 15-17, and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Newkirk et al. USPN 5921973.

As to claim 1, Newkirk discloses an absorbent article comprising an elastic component comprising a first substrate 11 having an elastomeric composition 13 (col. 5, lines 55-63) disposed there in a predetermined geometric pattern (col. 5, lines 39-55), such that the elastomeric composition partially penetrates the first substrate. The limitation regarding the formation of the elastic/elastomeric component is directed to a process of making the article. "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted). MPEP 2113.

As to claim 5, see col. 2, lines 55-61.

As to claims 6 and 7, see col. 5, lines 44-55.

As to claim 10, Newkirk discloses continuous or intermittent application of adhesive in a pattern of lines, spirals, or spots, it is reasonable to conclude the spaces between the adhesive would be uniform or non-uniform (col. 5, lines 44-55).

As to claims 15 and 16, Newkirk discloses one additional elastomeric component 12 on the substrate 11.

As to claim 17, Newkirk discloses the elastic components in the waist and cuff regions (col. 6, lines 56-58).

As to claim 23, see col. 3, lines 29-35.

As to claim 24, see col. 4, line 1 through col. 5, line 11.

As to claim 25, see 6, lines 22-53.

As to claims 26 and 27, see col. 6, lines 3-22.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newkirk USPN 5921973.

As to claims 2-4, Newkirk discloses the claimed invention except for the elasticity. Newkirk teaches the elasticity can be varied depending on the fiber

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composition of the composite (col. 1, line 55 through col. 2, line 22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the article of Newkirk with the claimed elasticity, since it has been held that "discovering an optimum value of a result effective variable involves only routine skill in the art". *In re Boesh*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

As to claims 8 and 9, Newkirk discloses the claimed invention except Newkirk does not disclose the dimensions of the adhesive elements. However, Newkirk discloses adhesive bonding in a predetermined pattern that is suitable to allow the composite to be flexible and extensible (col. 5, lines 39-55). Therefore, the general conditions of the claims are disclosed. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the adhesive of Newkirk with the claimed dimensions since it has been held that "where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Allowable Subject Matter***

7. Claims 11-14, and 18-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jacqueline F Stephens  
Examiner  
Art Unit 3761

July 6, 2005

**TATYANA ZALUKAeva**  
**PRIMARY EXAMINER**

